

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5469**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30, May 24 2006 in Sacramento, with Vice Chair Ann M. Richardson presiding.

<b>2. Roll Call: <u>Members</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>
Ann Richardson, Vice Chair	X	
Virginia Strom-Martin	X	
Jack Cox	X	
Don Novey	X	

**3. Approval of the Minutes:**

The April 11, 2006 minutes were approved by all members.

**4. Board Member Reports:**

Vice Chair Richardson reported that she has not heard anything from the Governor's office or from Agency regarding the appointment of a new chair. She had lunch with former chair Joan Borucki, who is doing well at the lottery but misses everybody at CUIAB.

Vice Chair Richardson reported that a good friend of hers, Linda Adams, was just appointed to the CAL EPA, and that it is her opinion this was a brilliant appointment by the Schwarzenegger administration.

Board Member Novey reported that when he first came to this agency he was told that this was back breaking work, and today that is evident by the absence of Jay for back surgery.

Board Member Novey also reported that California has brought in an extra 7.5 billion dollars, so the legislators will be fighting over it for the next few nights.

Board Member Strom-Martin commented that maybe we can pay off some of our debt.

**5. Chief Administrative Law Judge/Executive Director's Report:**

Executive Director/Chief Administrative Law Judge Jay Arcellana was not able to attend the May Board Meeting due to back surgery. Presiding Administrative Law Judge Tim McArdle reported for him.

Presiding Administrative Law Judge Tim McArdle stated that he had no report as Executive Director, but would give one for field operations.

## **6. Branch Reports:**

- a. Presiding Administrative Law Judge Tim McArdle reported that Jay had spoken with Aida and Cary this morning and informed them that his surgery was successful, although the surgery was apparently more involved than they had anticipated.

Presiding Administrative Law Judge Tim McArdle also reported that the ALJs have had a increase in their case load. The increase is two cases per week for the last five weeks of the fiscal year, which means an increase from 25 to 27 for the ALJ Is and from 28 to 30 for the ALJ IIs. There was some initial grumbling about it but Presiding Administrative Law Judge Tim McArdle has been in the field for the past week and half and has been really impressed by the willingness of the judges to work the increased cases. They realized we were in a pinch and were very happy to be helping out and contributing. Presiding Administrative Law Judge Tim McArdle stated that he thought it spoke well for our workforce and the state of moral.

Presiding Administrative Law Judge Tim McArdle further reported that the digital recording rollout has now been extended to Inglewood and Los Angeles. The rest of the offices will not be rolled out until September so that most people will be back from vacations. The offices that have been rolled out so far have been very successful.

Presiding Administrative Law Judge Tim McArdle continued to report that four judges have retired out of the San Francisco Office over the past year. They are Bob Marter, Michael Berger, Alison Colgon and Nancy O'Brien, who was the PJ in the old Long Beach office and more recently in Oakland, then most recently as the liaison for the Disability Insurance Program. There was a combined retirement party last week in San Francisco. Also last month a 39-year ALJ with this agency, Paul Wyler, retired. He was an iconic figure in this agency and was very energetic. He is in his mid seventies now and newly married.

Presiding Administrative Law Judge Tim McArdle reported that one of our judges from the Los Angeles Office of Appeals has been appointed by the Governor to the Superior Court: Mary Lou Villar, who is the sister of Los Angeles Mayor, Antonio Villaregosa. Presiding Administrative Law Judge Tim McArdle referred to an article in the Los Angeles Times that ran last week and talked about the warm and caring relationship between the Governor and the Mayor of Los Angeles, and that it is just merely coincidence that Ms. Villar is his sister because everybody agrees how extremely qualified she is.

Presiding Administrative Law Judge Tim McArdle reported that he received a call from the Governors Office yesterday notifying us that he will not be able to attend the NAUIAB triennial conference.

Presiding Administrative Law Judge Tim McArdle provided training to the Department of Social Services ALJs in the area of judicial ethics this month. This was their first training conference in five years and it was very good.

Finally, Presiding Administrative Law Judge Tim McArdle reported that two weeks ago he went to Mississippi for the third time and gave training to their Administrative Appeals Officers. They are trying very hard to upgrade their status and professionalism. Presiding Administrative Law Judge Tim McArdle is working on a new code of ethics for them, and overall it was a very positive week. They were very upbeat and very much want to get this done. All of the travel time and expenses is under an interagency agreement with the Mississippi Department of Employment Security, so there is no cost to the CUIAB.

Vice Chair Richardson commended Presiding Administrative Law Judge Tim McArdle for all of the fine expertise he shares with the other California agencies and other states, and for all of the work that he does for our own agency, and that his efforts are very much appreciated by the Board.

- b. Deputy Chief ALJ, Appellate Operations Steve Angelides reported that April was a completely average month in Appellate Operations. Registrations were 1,280, which is 95% of the calendar year average. Dispositions were 1,208, 89% of the average. The balance of open cases was 2,363, 98% of average. The appeal rate was 6.9%, 105% of average. The average case age was 41 days, 96% of average, and the median case age was 37 days, 95% of average. He stated that he always likes to say that for any appellate system the best day is a completely uneventful one, and from that perspective April was a great month for Appellate Operations, average and uneventful.

Deputy Chief ALJ, Appellate Operations Steve Angelides continued to report that the more important perspective is that compared to last year they're running at 85% speed, so there are fewer events which have the potential to become eventful. Registrations so far this year have been 85% of last year's to date, and dispositions have been 86% of last year's to date. Deputy Chief ALJ, Appellate Operations Steve Angelides stated that the Board may recall that they had three ALJ's retire at the end of last year, and one ALJ take a 20% partial retirement. This amounted to an 18% reduction in ALJ resources. However, they have one ALJ on long term loan from the Sacramento Office of Appeals, which gives them a 12% net reduction in ALJ resources. Compared to a 15% reduction in workload so far this year, that leaves them pretty much in balance.

However, without being able to use their retirees for most of May they did not have the ability to respond to the spike in registrations in March, which has

resulted in a large number of cases ready for assignment in May. They have been training three field ALJs to do appellate work, but due to the deficit reduction program they will be unable to use them to help in June. Perhaps they may be able to give us some help later in the summer. In the meantime we're hoping to be able to use our retired ALJ's again for the rest of May and June.

Deputy Chief ALJ, Appellate Operations Steve Angelides went on to report that on May 10 they had their regular ALJ meeting, and were joined for lunch afterwards by our Vice Chair, by retired ALJ Tamara Pierson, and by our visiting FO ALJ's Betsy Temple, Carol Larsen, and Linda Bytof. It was the first time they had seen Tamara since her son's serious automobile accident last year, and were heartened to hear about his continuing progress in recovering.

Finally, Deputy Chief ALJ, Appellate Operations Steve Angelides reported that they are planning a picnic on July 20 at Natomas Oaks Park in honor of ALJ Mike Canar's retirement, and everyone is invited.

- c. Deputy Director, Administrative Services Branch Pam Boston reported that during the month of April, Personnel hired an office assistant in the Oakland Office of Appeals and a student assistant in the Planning and Program Management Branch. There were two promotions: one in the Planning and Program Management Branch and one in Admin. Services. There were also a couple of retirements: an ALJ at Appellate Operations and an Office Technician in San Diego.

Deputy Director, Administrative Services Branch Pam Boston also reported that Personnel has completed the oral exams for Staff Services Manager III, Program Technician III, and Office Technician.

Deputy Director, Administrative Services Branch Pam Boston continued to report that the Governor has signed the Unit 2 contract which includes our ALJs. The contract runs from July 1, 2005 to June 30, 2007. They had been working without a contract since July 2, 2003. Some of the highlights that affect our ALJs are that they are receiving a 2.5% cost of living adjustment retroactive to July 1, 2005, with another increase of 3.4% effective July 1, 2006. The retroactive paychecks should be issued within the next couple of days. Other significant provisions require an additional 1% contribution by Unit 2 employees to their retirement, beginning July 2006. In addition, new employees hired into the unit two will be covered by a new pension formula based on the highest three years average salary instead of the one year that is currently in place. There was also an increase in the State's health contributions. However, new employees won't be eligible for the full State health contribution amount for dependent coverage until they complete two years of work for the State. The State contribution will be half the normal amount during the first year and seventy five percent during the second year.

Deputy Director, Administrative Services Branch Pam Boston reported that Business Services has conducted a site search for a new facility in Fresno. There are four possible sites for the relocation. There were also some tenant improvements in the Pasadena Office of Appeals. Phase one is complete, and phase two should be completed sometime this week.

Deputy Director, Administrative Services Branch Pam Boston further reported that the Information Technology Division has completed upgrading phone lines in San Bernardino, Long Beach and West Covina. The staff in those outstations are very appreciative of the higher speeds. Also, DSL installation was completed in the Roseville hearing facility.

- d. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that the Inglewood and Fresno Offices of Appeals have requested support assistance from the P&PM Branch. This was due in part by a decision made between Jay and the budget advisory committee that retired annuitant support staff not work through June. So P&PM is filling that absence in the Inglewood and Fresno Offices because they had the largest number of retired annuitant support staff that they used on a regular basis. If there are any training needs that are identified, the P&PM staff will meet with the PJs in the individual offices and the Legal Support Supervisors to see if they might be receptive to suggestions on changing work processes or training that they feel will help the staff.

Secondly, Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that for the software training modules she met with Jay Arcellana and Martha Silva a week and half ago, as Martha is the manager over the Strategic Planning/Training and Program Support Division that includes the software trainers. They have been asked to develop specialized training modules for ALJs on software training. Software training modules will later be developed for the support staff. The software trainers are currently assisting Inglewood and Fresno, so they will begin the development of the training modules in mid July.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons also reported that all the ALJ regional training has been completed for the ALJs. Jeanette Perez of the P&PM Branch provided significant support to Randy Petersen for this training assignment and I wish to recognize her for this.

Lastly, Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that budget officer Renee Erwin and the budget staff are putting together a budget package to be presented at the June Board Meeting. She stated that the agency has an approximate budget of 70 million dollars, the details of which will be presented to the Board at the June Board Meeting.

**7. Chief Counsel's Report:**

Chief Counsel Ralph Hilton reported that three court cases were closed last month, with the Board affirmed on all three. There were also four new cases filed.

Chief Counsel Ralph Hilton reported that the Board Member case load is still pretty substantial, with 469 cases for each Board Member, or between 24 and 25 cases per day for each member.

Board Member Strom-Martin commented how much she enjoys Jay's weekly report. She stated that it is very illuminating and that it keeps her apprised of what is happening within the agency.

Vice Chair Richardson stated that they are very helpful and she also thanked Jay. She also said she is thinking of him and hoping for a speedy recovery.

The meeting adjourned to closed session prior to consideration of the next item on the agenda. No votes were taken in closed session.

**8. Unfinished & New Business:**

Vice Chair Richardson stated the Board would now consider the exercise of its authority to take over a case pursuant to Unemployment Insurance Appeals Code 413.

Chief Counsel Ralph Hilton identified the case as number 1765523.

Vice Chair Richardson expressed concern about whether or not the claimant received due process in this matter. There were several issues and one of the central issues was the claim effective date, which the claimant appealed, and another was how the Voluntary Plan calculated her weekly benefit amount. The voluntary plan had contended that they paid her \$25,480.00. The claimant contended that she had not received any of that money. The record was left open for three days to allow the Voluntary Plan to provide the ALJ with proof of payment of that amount, as they were unable to provide proof of any payments during the hearing. No additional evidence was submitted during that three-day period, so those issues are still outstanding. Vice Chair Richardson is also concerned that the claimant may actually be entitled to a greater amount than \$490.00 per week.

Board Member Strom-Martin stated that she agreed with Vice Chair Richardson's concerns, but she was concerned that if the Board takes the case over to remand back to the field, the Voluntary Plan employer may come up with reasons or evidence that may make the decision that holds her eligible void. She didn't want the claimant to be in a worse position. Board Member Strom-Martin stated that she would side with the Vice Chair and vote for the remanded case.

Board Member Don Novey stated that he was quite reticent to remand this matter for another hearing. Having dealt with governmental structures for most of his life,

he has less than high regard for resolving matters when you have to reopen a record and let the employer expand with out having had to deliver anything in the original case. In addition, there has already been some resolution on behalf of the claimant and she may be happy to see this matter resolved. Board Member Novey went on to state that the difficulty with taking this action here is that it can create other problems out there. He stated he is not happy with the decision but he is satisfied with some resolve on behalf of the claimant. For this citizen's sake he would like to see it not continued and he votes no.

Board Member Jack Cox stated that if there is a problem with the Voluntary Plan then the case should be kicked back to EDD. In addition, if this case is remanded, the claimant could end up worse than where she is now. Based on that he votes no.

Board Member Don Novey added that although the claimant could collect more money, he didn't want her to have to deal with this structure again and the difficulty of going through a hearing again.

Vice Chair Richardson stated that this is supposed to be a user friendly process for the claimant as well as the employer and she thinks that in the future the Board should strive diligently to make sure that the claimants and the employers are served in an efficient and courteous fashion and that they will ensure due process in all future cases.

On motion for takeover of the case, Vice Chair Richardson and Board Member Strom-Martin voted to take over the matter, and Board Member Cox and Board Member Novey voted to not take over the matter. The motion did not carry.

**9. Public Comment:**

There was no public comment.

**10. Closed Session:**

See notation under Chief Counsel's report, above.